

THE QUEEN

v.

ULRICH EMIL SCHMID

Coram: Gault J (*presiding*)
Thorp J
Henry J

Hearing: 22 June 1994

Counsel: K Ryan for appellant
S J E Moore for Crown

Judgment: 22 June 1994

[ORAL] JUDGMENT OF THE COURT DELIVERED BY HENRY J.

Ulrich Emil SCHMID was found guilty at trial on three charges relating to the Class B drug MDMA also known as Ecstasy. They were conspiracy to supply, supply, and the attempted manufacture of the drug. On each charge he was sentenced to concurrent terms of 4 years imprisonment. All charges relate to activities whilst appellant was living at the Centrepoint Commune in Albany.

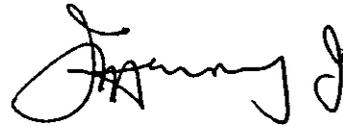
The conspiracy charge covered the period from July 1988 to May 1992. It involved two co-offenders, Bonallack and Potter, who were also found guilty at trial of that charge. Bonallack was sentenced to 4 years imprisonment, Potter to 2 years, but in his case that to be cumulative on sentences he was then serving in respect of other offending.

It is unnecessary to detail the circumstances of these three offences other than to note that the supply was of two tablets as samples, clearly indicating a continuing supply was in mind. When that is coupled with the attempt to manufacture and the lengthy period during which the conspiracy existed, it is apparent that the appellant was directly involved to a reasonably substantial degree in the manufacture and supply of this drug. It is also clear that this was an ongoing involvement with overall the hallmarks of a commercial operation of some substance. Sums of money referable to the activities of the Community in this respect appear to be quite large. Appellant is 52 years of age, with a family, and has positive attributes. But those factors are really of minimal weight as are indeed, in this particular circumstance, his convictions for indecency. As has often been said, personal circumstances have little relevance in these cases.

The total term of 4 years imprisonment for these charges is within recognised sentencing parameters for Class B offending of this magnitude. Mr Ryan's primary submission was that there is an unacceptable disparity between this sentence and that imposed on the co-offenders. We find no such disparity. As to the co-offender Bonallack, he received 4 years imprisonment on the sole charge against him - that of conspiracy. Clearly no disparity exists there. As to Potter, he was sentenced to imprisonment on one count of conspiracy. That term was for 2 years but cumulative on existing sentences which we understand included a 3 year term for offences relating to the drug LSD, and a 2 year term for the possession and supply of the drug Ecstasy. In addition, some time after imposition of those sentences Potter received an 8 year sentence for offences of indecency. Clearly the Judge was required to have regard to and to apply the totality principle in his case.

This appellant faced three separate charges. The sense of grievance which he is said to be under in particular by reason of a comparison with his co-offender Potter is unjustified. On proper analysis it can be seen that he has been *treated neither unfairly nor differently from either of his co-offenders.*

We are not persuaded that the sentence was excessive or inappropriate. We do not consider there is any disparity such as would warrant this Court's intervention. The appeal is therefore dismissed.

A handwritten signature in black ink, appearing to be 'J. Ryan', written in a cursive style.

Solicitors:
K Ryan, Auckland, for appellant
Crown Solicitor, Auckland, for respondent